THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.8972 of 1995

DATED: 23-03-2006

Between:

D.Sathaiah . . .Petitioner

And

Joint Collector and others . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.8972 of 1995

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O R D E R:

In this petition filed under Article 226 of the Constitution of India, the petitioner obtained a rule from this Court asking the respondents to show cause as to why a writ in the nature of Certiorari shall not be issued by calling the records relating to the order, dated 17-05-1993, passed by the 1st respondent and to quash the same.

During the pendency of the writ petition, respondents 2 and 3 died. Therefore, their Legal Representatives were brought on record.

In the impugned order, it is averred that one Sivaiah, who is father of respondents 2 and 3, was a protected tenant over Survey Nos.282 and 312 admeasuring 18 and 11 guntas, respectively, situated at Medchal. On his death in 1968, respondents 2 and 3 are cultivating the suit lands by paying rent to the landholder,
Mr. Waheeduddin. The petitioner, who is the GPA holder of the said Mr.Waheeduddin, filed a petition on 20-04-1976 under Section 32(2) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, (for short "the Act") before the Tahsildar for eviction of respondents 2 and 3 for non-payment of the rent since 1968 onwards. The Tahsildar through his orders, dated 03-12-1979, directed the respondents to pay the rent from 1977 to 1982 observing that the respondents had already paid the arrears of rent for three years amounting to

Rs.107-45 ps.

It is further averred that the GPA holder in a previous appeal vide No.B4/1222/87 filed before the Joint Collector, stated that the father of respondents 2 and 3 was only an ordinary protected tenant; that the Tahsildar by an order, dated 03-12-1979 in File No.B3/3215/76 directed their eviction for default in payment of rental arrears; that he was in possession of the suit property, and that when the respondents interfered with his possession, he filed O.S.No.193 of 1981 before the District Munsif, Medchal and the same was decreed.

It is further averred that the respondents preferred an appeal under Section 98 of the Act before the Joint Collector, Ranga Reddy District, against the order, dated 10-12-1980, passed by the Tahsildar ordering their eviction. The Joint Collector remanded the same to the Tahsildar for fresh disposal. On such remand, the Tahsildar by an order, dated 29-07-1982, directed respondents 2 and 3 to pay a further sum of Rs.806-18 ps. towards rent. The Tahsildar passed another order, dated 10-09-1982, directing the Revenue Inspector to handover possession to the petitioner/GPA holder. Questioning the said order, respondents 2 and 3 filed WP.No.8010 of 1984 seeking delivery of possession, but the order, dated 29-07-1982, for payment of rentals remained unchallenged. The said writ petition was disposed of on 05-11-1986 directing respondents 2 and 3 to prefer an appeal before the Joint Collector and allowing them to continue in possession and enjoyment of the land. Accordingly, they preferred an appeal before the Joint Collector. In the light of the directions issued by this Court, the Joint Collector directed the Mandal Revenue Officer to put the respondents in possession of the property. Accordingly, the Mandal Revenue Officer delivered the possession of the property along with the standing crop to them on 04-09-1987. Aggrieved by the said order, the petitioner herein filed WP.No.16009 of 1987. The Joint Collector allowed the appeal filed by the respondents on
10-11-1987. Against the said appeal, the petitioner filed CRP.No.1473 of 1988 and this Court disposed of the same on
07-09-1989 directing the Mandal Revenue Officer, Medchal, to decide the matter based on the following three issues:

1. whether the land holder is alive or not;

2. whether the demand for lease amount has been made or not

3. whether the GPA has locus standi or not.

The Mandal Revenue Officer, Medchal, accordingly conducted an enquiry and submitted a report on 03-04-1991 in file No.B/1018/89 holding that the pattedar is alive, demand was made and the GPA has locus standi to represent Mr. Mohd.Waheeduddin.

On 31-03-1990, this Court disposed of W.P.No.16009 of 1987 directing the Joint Collector to decide the appeal on merits within a period of three months from the date of receipt of a copy of that order.

Pursuant to the said directions, the Joint Collector passed the impugned order observing that late Mr.Sivaiah, father of respondents 2 and 3, was issued Protected Tenant Certificate in 1950 in respect of the suit lands and on his death, respondents 2 and 3 succeeded to the same. The dispute is about possession of lands in question between PTs and landlord through GPA, who originally initiated proceedings under Section 32 of the Act for eviction. Thereupon, the Mandal Revenue Officer passed an order for payment of Rs.107-40 ps towards rent from 1977 to 1979. On payment of the said amount by the PTs, he could have closed the proceedings, but he cannot revive the earlier demand of Rs.806-18 ps for the period from 1979 to 1982, and if at all any further amount is due towards the rent, he could have taken up the same as a separate case and disposed of it after giving an opportunity to the PTs. He cannot review his own order without giving an opportunity to the PTs. Finally, it is held that the earlier order, dated 10-01-1987, passed by him holds good. Further, he directed the respondents/PTs to continue their possession over the suit land by paying rent to the landlord as per Rules. Questioning the same, the petitioner/GPA holder filed the present writ petition.

Learned Senior Counsel Sri N.V.Ranganadham appearing for the petitioner would contend that once this Court in WP.No.16009 of 1987 directed the Joint Collector to dispose of the appeal on merits, he has to pass fresh orders but he cannot pass orders holding that the earlier order passed by him is in existence. He would further contend that no appeal is filed challenging the direction issued by the Mandal Revenue Officer for paying the rental amount of Rs.806-18 ps. and that the impugned order is erroneous.

When a question was put to the learned senior counsel about the maintainability of the writ petition in view of a revision provided to the High Court under Section 91 of the Act against any order passed by the Joint Collector, within six months from the date of the order, the only answer from the learned senior counsel is that the earlier order was challenged by way of writ petition, and so, the impugned order was also challenged through the same.

It is not in dispute that against the order in appeal, which has been disposed of on 17-05-1993, a revision, if any, has to be filed within sixty days, excluding the time for obtaining certified copy, to this Court under the Act. Admittedly, he applied for a certified copy on 19-07-1994 and received the same on 22-07-1994. Even if the date on which, he received the copy, is taken into consideration, revision has to be preferred on or before 22-09-1994. But, the present writ petition was filed on 27-04-1995.

It is a settled proposition of law that a remedy to Article 226 is a discretionary, but not in derogation of the statutory provisions, where a revision is provided under the special enactment to the High Court.

It is well settled that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution.

When the party had statutory remedy of assailing the order passed by the Joint Collector by way of revision to this Court itself, he could not bypass the said remedy and take recourse to the proceedings under Articles 226 and 227 of the Constitution. Such a course of action may enable a litigant to defeat the provisions of the statute, which may provide for certain conditions for filing the revision, like limitation etc. (**see SETH CHAND RATAN v. PANDIT DURGA PRASAD and SHYAM KISHORE v. MUNICIPAL CORPORATION OF DELHI**).

The finding recorded by the Joint Collector that the father of the respondents was the Protected Tenant, in whose favour a PT certificate was issued, has not been challenged in any forum. Admittedly, when the proceedings were initiated under

Section 32 of the Act for eviction and for payment of rents from 1977 to 1979 i.e. for three years, a notice was issued to the PTs for payment of rent, which was deposited by them. On such deposit, the proceedings have to be closed and no further orders are required to be passed for due eviction of the tenants. The Mandal Revenue Officer curiously passed an order for the subsequent period from 1979 to 1982 by revising the earlier demand and on failure to pay the same, ordered eviction, which was successfully challenged by the tenants before the Joint Collector in File No.B4/1222/87 and the Joint Collector rightly allowed the same having observed that the eviction order passed by the Mandal Revenue Officer is obviously in error since, he has to close the proceedings on depositing the amount but he cannot order eviction without there being any application seeking a direction for payment of rent for the subsequent years, that too without any notice to the tenants.

For the aforesaid reasons, I am of the view that the impugned order does not suffer from any manifest illegality warranting interference by this Court.

The Writ Petition is accordingly dismissed. There shall be no order as to costs.

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(A.GOPAL REDDY, J)

23rd MARCH, 2006.

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